

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of Section 9	)	MD Docket No. 94-19
of the Communications Act	)	
	)	
Assessment and Collection of	)	
Regulatory Fees for the 1994	)	
Fiscal Year	)	

To: The Commission

COMMENTS

The Association of America's Public Television Stations ("APTS") hereby submits its comments in response to the FCC's Notice of Proposed Rulemaking ("Notice") released in the above-captioned proceeding on March 11, 1994. APTS is a private, nonprofit membership organization whose members comprise virtually all of the nation's 350 public television stations. The APTS comments address the specific portion of the FCC's Notice that proposes exempting public broadcasting licensees and permittees from the proposed annual regulatory fees, which are designed to implement Section 9 of the Communications Act of 1934, added by Section 6003(a) of the Omnibus Budget Reconciliation Act of 1993.

APTS concurs with the Commission's conclusion that the express language of Section 9(h) of the Communications Act, as well as the Schedule of Regulatory Fees in Section 9(g), show that Congress intended to exempt public broadcast entities from the payment of annual regulatory fees. In addition, APTS requests that the Commission clarify its proposed regulations to make clear that public broadcast licensees and permittees granted noncommercial licenses and permits by the Commission, should not be required to submit any further certification of their noncommercial status.

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## **I. Public Television Entities Are Intended To Be Exempt From Annual Regulatory Fees**

The express exemptions of Section 9(h) of the Communications Act include public television licensees and permittees. Section 9(h) expressly states that the annual regulatory fees should not be applicable to "governmental entities or nonprofit entities." As required by Section 73.621 of the FCC's Rules, all public television licensees and permittees are either nonprofit or governmental entities. In sum, the language of Section 9(h) encompasses all public television licensees and permittees in its express exemptions for nonprofit and governmental entities.

Further, as the Commission discusses in ¶ 18 of the Notice, the Schedule of Fees in Section 9(g) specifies that the annual regulatory fees should be collected from "commercial" television licensees and permittees. APTS concurs with the Commission's conclusion, "[t]hus, regulatory fees are expressly not applicable to noncommercial educational television licensees and permittees" (¶ 18), as well as the Commission's proposal to extend this exemption to auxiliary television, common carrier, private radio, and other stations "used in conjunction with qualifying noncommercial educational" stations (¶ 19). The Commission's conclusion is supported by the legislative history which includes House Report 102-207, which states that "[t]he legislation includes as 'feeble' all entities regulated by the FCC, with the exemption of...noncommercial users." The House Report also states that "public television and radio licensees were exempted from user fees. Since these licensees were exempted in the public interest, it is appropriate to fund these functions with general revenues, not user fees."

The express exemptions of public broadcasters in Sections 9(g) and (h) of the Act are consistent with existing FCC's Rules, the nonprofit, noncommercial licenses held by public broadcasters, and the 40-year history of federal support for public broadcasting. The FCC has reserved a portion of the broadcast spectrum for noncommercial licensees, and Congress has provided federal funding to "complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States." 47 U.S.C. § 396(a)(7). Requiring public broadcasters to pay fees for the use of spectrum would lead to the illogical

result of requiring public broadcasters to utilize government funds intended for program services to pay the government for transmission capability. For that reason, public broadcasters have consistently been exempt from filing and user fees imposed upon commercial communications entities. For example, Section 1.1112 (c) of the FCC's Rules specifies that the filing fees set forth in Subpart G of the Rules, Schedule of Statutory Charges and Procedures for Payment, do not apply to noncommercial educational television licensees, permittees, or applicants.

In conclusion, the express language of new, as well as existing, provisions of the Communications Act and the FCC's Rules make clear that public television entities are exempt from the proposed annual regulatory fees.

## **II. The Commission Should Not Require Documentation Of Noncommercial Status From Public Television Licensees And Permittees**

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In its Notice, ¶ 21, the Commission discusses what paperwork may be required of noncommercial licensees and permittees to support their exempt status. The Commission proposes to rely on information currently in FCC records to identify noncommercial entities. However, the Commission states that "where necessary, we reserve the option of requiring such entities, in lieu of paying the required fee, to file certifications (and other relevant information) as to their noncommercial status" in order to prove that "the entity qualifies under our rules for the noncommercial exemption" (¶ 21). APTS submits that there should be no case in which a public television entity would be required to submit such a certification or any other such materials.

As discussed above, Section 73.621 of the FCC's Rules specifically limits the issuance of public television licenses and permits to nonprofit or governmental entities. Thus, the grant of a license under the rules is certification that public television stations meet the exemption of Section 9(h). Furthermore, Section 73.621 requires licensees "to furnish a nonprofit and noncommercial television broadcast service." Thus, public television stations, by virtue of their licensing requirements, must provide a nonprofit, noncommercial service. To require further certification of noncommercial

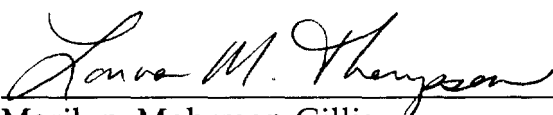
status would be duplicative of the existing license requirement and completely unnecessary.<sup>1</sup> APTS, therefore, requests that the Commission clarify this part of its proposal and, in adopting final rules, make clear that it will acknowledge noncommercial licenses or permits granted under Section 73.621 as proof of the exempt status under Sections 9(h) and (g).<sup>2</sup>

### CONCLUSION

APTS supports the Commission's interpretation that noncommercial public television licensees are exempt from annual regulatory fees under the Omnibus Budget Reconciliation Act of 1993. APTS requests that the Commission make clear that the very existence of a noncommercial television license or permit is sufficient to render a licensee or permittee exempt from the proposed annual regulatory fees.

Respectfully submitted,

ASSOCIATION OF AMERICA'S PUBLIC  
TELEVISION STATIONS

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<sup>1</sup> Section 73.621 states that noncommercial educational television broadcast stations will be licensed only to "nonprofit educational organizations" or a governmental "municipality or other political subdivision" to "furnish a nonprofit and noncommercial television broadcast service."

<sup>2</sup> In the case of any noncommercial public television licensee, such as WNET, located in New York City, New York, operating pursuant to Section 73.621 of the FCC's Rules, that is licensed on a commercial frequency but has a noncommercial license, the noncommercial license would be sufficient proof of the licensee's noncommercial, exempt status.